

Appendix A

LEASE AGREEMENT BETWEEN AUGUSTA-RICHMOND COUNTY AND USACE, SAVANNAH DISTRICT

A-1: 1987 Original Agreement

A-2: Memorandum of Agreement

A-3: Supplemental Agreement No. 2

Exhibit "A"

DEPARTMENT OF THE ARMY

Lease Number DACW21-1-86-1139

For the Public Park, Recreation and Locking Operations
Purposes

New Savannah Bluff Lock and Dam Project Area

THIS LEASE, made by and between the Secretary of the Army, (hereinafter "United States"), and the City of Augusta, Georgia (hereinafter "Lessee"),
WITNESSETH: THAT

WHEREAS, U.S. Army Corps of Engineers funding for operation and maintenance of the New Savannah Bluff Lock and Dam Project (hereinafter "the Project") is established as being a low priority item; and

WHEREAS, the City of Augusta, Georgia, pursuant to resolution enacted by its City Council is empowered to operate and maintain the Project which is presently being operated and maintained by the U.S. Army Corps of Engineers; and

WHEREAS, the United States may authorize leasing of the Project to the City of Augusta, Georgia, for purposes of operation and maintenance of the Project by the City:

NOW, THEREFORE, the Secretary of the Army under authority of Section 4 of the Act of Congress approved 22 December 1944, as amended (16 U.S.C. 460d), hereby grants to the City of Augusta, Richmond County, Georgia a lease for a period of three (3) years commencing on 1 May 1987, and ending on 30 April 1990, to use and occupy approximately fifty (50) acres of land and water areas under the primary jurisdiction of the Department of the Army in the New Savannah Bluff Lock and Dam Project area, hereinafter referred to as the premises as shown on attached Exhibit "A", Master Plan update, dated 16 September 1985, for public park, recreation and lock operation purposes.

THIS LEASE is granted subject to the following conditions:

1. The Lessee shall conform to such regulations as the Secretary of the Army may issue to govern the public use of the project area, and shall comply with the provisions of the above-cited acts of Congress. The Lessee shall administer this lease in accordance with the provisions of Title 36 Code of Federal Regulations, Chapter 3, Part 327, attached hereto as Exhibit "B", and any amendments or changes thereto. The Lessee shall protect the premises from fire, vandalism, and soil erosion, and may make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with provisions of the above cited acts of Congress.

2. The Lessee shall administer the land and water areas included in the lease for recreation purposes and bear the cost of operation, maintenance and replacement of all recreation facilities on the premises at the commencement of this lease and as are added during its term. Further, Lessee shall bear the cost of operation and maintenance of all lock facilities on the premises at the commencement of this lease and as are added during its term. As used in this lease the term "replacement" shall be constructed to mean the replacement in whole or in part of any structure or improvement so worn or damaged by any cause as to no longer adequately serve its designed function with normal maintenance. The Lessee shall keep the leased premises in a clean, sanitary, and safe condition, and shall at all times maintain all structures and equipment in a condition satisfactory to said District Engineer. The Lessee shall operate and maintain the leased premises in accordance with the terms of a standard operating procedure plan prepared by the Savannah District, Corps of Engineers (Exhibit "C" and materials cited therein). The United States shall provide technical support and assistance, including operating manuals, operational procedure guides, and similar advice, as may be necessary and available from the Savannah District, Corps of Engineers Office.

3. The Lessee may grant permits and licenses and sublease all or portions of the leased property for purposes which are consistent with the term and conditions of the lease. All such conveyances shall state that they are granted subject to the terms and conditions of this lease and shall not be effective until approved by the District Engineer.

4. Admission and/or user fees may be charged by the Lessee for the entrance to or use of the premises or any facilities constructed thereon, PROVIDED, prior written approval of the District Engineer is obtained and that such fees are imposed equally. Pursuant to the provisions of 33 United States Code, Section 5, no tolls or operating fees shall be charged for any vessel passing through the lock.

5. That any fees and price charged by the Lessee or its sublessees or concessionaires for food and other goods and services furnished or sold to the public shall be subject to the prior approval of the District Engineer. The Lessee shall, within thirty (30) days of the commencement of this lease and by 15 April of each succeeding year, submit to the District Engineer for approval a list of the fees and prices proposed for the following year, including justification for any proposed increase or decrease. The District Engineer will give written notice to the Lessee of his approval of or objection to any proposed fee or price, and will, if appropriate, state an approved fee or price for each item to which an objection has been made. The Lessee and or its sublessees or concessionaires shall keep a schedule of such fees or prices posted at all times in a conspicuous place on the leased premises.

6. All monies received by the Lessee from operations conducted on the premises, including, but not limited to, admission fees and user fees and rental or other consideration received from its sublessees or concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Any such monies not

so utilized, or programmed for utilization within the three year lease period, shall be paid to the District Engineer at the end of each 3-year period. The Lessee shall establish and maintain adequate records and accounts and render annual statements of receipts and expenditures to the District Engineer, except for entrance fees which also are honored at other recreational areas operated by the Lessee. The District Engineer shall have the right to perform audits of the Lessee's records and accounts, and to require the Lessee to audit the records and accounts of sublessees and concessionaires, and furnish the District Engineer a copy of the results of such an audit.

7. All structures shall be constructed and landscaping accomplished in accordance with plans approved by the District Engineer. Further, the Lessee shall not discharge waste or effluent from the premises in such a manner that such discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

8. The right is reserved to the United States, its officers, agents, and employees, to enter upon the premises at any time for inspection of the premises to determine condition of operating equipment and Lessee's compliance with requirements of Exhibit "C" and materials cited therein. The right is also hereby reserved to the United States, its officers, agents, and employees, to enter upon the premises at anytime and for any purpose in connection with Government work, including lease compliance and health and safety inspections, any purpose necessary or convenient to river and harbor and flood control work, including removal of timber or other material required for such work and flooding the premises when necessary, and/or to make any other use of the land as may be necessary in connection with project purposes, public navigation and flood control, and the Lessee shall have no claim for damages of any kind on account thereof against the United States or any agent, officer or employee thereof.

9. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or in lieu of such repair or replacement, the Lessee shall, if so required by the said officer, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damages to or destruction of Government property.

10. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents, servants, or employees or others who may be on the premises at their invitation or the invitation of any one of them, arising from or incident to the flooding of the premises by the Government or flooding from any other cause, or arising from or incident to any other governmental activities, and the Lessee shall hold the United States harmless from any and all such claims.

11. That at the time of the commencement of this lease, the Lessee will obtain from a reputable insurance company, acceptable to the Government, liability or indemnity insurance providing for minimum limits of \$500,000 per person in any one claim, and an aggregate limit of \$1,000,000 for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, and \$100,000 for damage to property suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease. The Lessee shall also procure and maintain during the time it is in possession of the leased property a standard insurance policy or policies on the leased property to the full insurable value thereof from any responsible company or companies. The policy or policies evidencing such insurance shall provide that, in the event of loss thereunder the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration, or replacement of the property damaged or destroyed, with any balance of the proceeds not required for the repair, restoration, or replacement of the property damaged or destroyed paid to the United States, and that in the event the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs, to have the proceeds paid to the Lessee for the purpose hereinabove set forth, then such proceeds shall be paid to the United States. Nothing herein contained shall be construed as an obligation of the United States to repair, restore, or replace the leased property or any part thereof. A letter certifying that the City of Augusta is self-insured will be accepted in lieu of a certificate or certificates evidencing insurance coverage.

12. This lease may be relinquished by the Lessee at any time by giving to the Secretary of the Army, through the District Engineer, at least 60 days notice in writing, at which time the Lessee shall be relieved of any future duties, obligations or liabilities under the lease.

13. This lease may be revoked by the Secretary of the Army in the event the Lessee violates any of the terms and conditions of the lease and continues and persists therein for thirty (30) days after notice thereof, in writing, by the District Engineer. Such a termination shall not preclude the United States from seeking such other remedies in law as may be available to the United States and in no way shall it act to relieve the Lessee of its responsibilities and obligations. In lieu of revocation, the District Engineer, in his discretion, upon a finding that a violation constitutes a health or safety hazard, may suspend the use of that operation or facility until such deficiency is corrected. If the deficiency is not corrected within the time specified by the District Engineer, the District Engineer will have the option to correct the health or hazardous conditions and collect the cost of repairs from the Lessee. The Lessee shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

14. On or before the date of expiration of this lease, or relinquishment by the Lessee, the Lessee shall at its cost vacate the premises, remove its property therefrom, and restore the premises to a condition reasonably satisfactory to the District Engineer. If, however, this lease is revoked,

the Lessee shall vacate the premises, remove its property therefrom, and restore the premises to the condition aforesaid within such time as the District Engineer may reasonably designate. In either event, if the Lessee shall fail or neglect to remove its property and so restore the premises, then its property shall become the property of the United States without compensation therefor, and no claim for damages against the United States, or its officers or agents shall be created by or made on account thereof.

15. The Lessee or its grantees or concessionaires shall not discriminate against any person(s) because of race, creed, color, sex, age, national origin, handicap, or religion in the conduct of its operations hereunder. The Lessee furnishes as part of this lease assurances (Exhibits "D" and "E") that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and all requirements imposed by or pursuant to Department of Defense Directive 5500.11, May 27, 1971, as amended (32 C.F.R. pt. 300), and all subleases shall provide like assurances.

16. All notices to be given pursuant to this lease shall be addressed, if to the Lessee, to Mayor, City of Augusta, Room 805, 530 Greene Street, Augusta, Georgia 30911, and if to the Government, to the District Engineer, U.S. Army Engineer District, Savannah, P.O. Box 889, Savannah, Georgia 31402-0889, or as may from time to time be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper, addressed as aforesaid and deposited postage prepaid in a post office or branch post office regularly maintained by the United States Government.

17. This lease is subject to all existing easements, and easements subsequently granted, for roadways and utilities located or to be located on the premises, and for other purposes, provided that the proposed grant of any easement will be coordinated with the Lessee and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the lands and facilities and developments, present or proposed by the Lessee; provided, further, that this lease is subject to present and/or future licenses, if any, granted by the Federal Energy Regulatory Commission for study and/or construction of hydroelectric power generating facilities and appurtenant uses.

18. The Lessee shall provide for security within the leased premises for the purpose of protecting the land and facilities from any and all acts of trespass, vandalism, and other unlawful acts. Lessee shall promptly report all such unlawful acts to the Corps of Engineers and to the appropriate law enforcement agency having jurisdiction over the leased premises for purposes of arrest and prosecution for such acts. In the event of a national emergency or terrorist threat, the United States will determine the need for and provide the necessary security forces.

19. That, as of the commencement date of this lease, an inventory and condition report of all property and improvements of the United States included in this lease shall be made by a representative of the United States and a representative of the Lessee to reflect the present condition of said property. A copy of said inventory and condition report shall be

attached hereto as Exhibit "F" and become a part hereof, as fully as if originally incorporated herein and at the expiration, revocation or termination of this lease, a similar inventory and condition report shall be prepared and submitted to the District Engineer, said inventory and condition report to constitute the basis for settlement by the Lessee with the District Engineer for leased property shown to be lost, damaged, or destroyed, to be either replaced or restored to the condition identified in the initial inventory, less ordinary wear and tear to the leased property.

20. The Lessee shall erect on the leased premises a sign indicating that the Lessee is operating and maintaining the area under lease and that the facilities therein were constructed by the U.S. Army Corps of Engineers, Savannah District.

21. The Lessee shall pay the United States the rate of \$60.00 per month for electrical power provided to the lock and dam facility. Payment shall be made monthly by the 10th day of each month to the Corps of Engineers Financing and Accounting Officer, Savannah District, P.O. Box 889, Savannah, Georgia 31402, and mailed to the attention of SASRE-MC. The United States shall operate and maintain the telephone and electrical system servicing the lock and dam facility. The Lessee is responsible for securing the necessary utilities servicing the recreational area of the leased premises.

22. The Lessee agrees to operate the lock facility to allow anadromous fish to pass through the structure, in accordance with the requirements and procedures outlined in Exhibit "G".

23. That the Lessee has inspected and knows the condition of the leased property and it is understood that the same is hereby leased without any representation or warranty by the United States whatsoever, and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

24. (a) That, except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the District Engineer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Lessee. The decision of the District Engineer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Lessee mails or otherwise furnishes to the District Engineer a written appeal addressed to the Secretary of the Army. The decision of the Secretary of the Army or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the Lessee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. After final decision of a dispute hereunder, the Lessee shall proceed diligently with the performance of the terms of the lease and in accordance with the said official's decision.

(b) This condition does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; provided, that nothing in this Condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

25. That no Member of or Delegate to Congress or City of Augusta or Richmond County official shall be admitted to any share or part of this lease or to any benefits to arise therefrom.

26. That, except as otherwise specifically provided, any reference herein to "District Engineer" shall include his duly appointed successors and his authorized representatives, and any reference herein to "Secretary" shall include his duly appointed successors and his authorized representatives.

27. The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty the United States shall have the right to annul this lease without liability or in its discretion to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

28. The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer, and the site and the material shall be protected by the Lessee from further disturbance until a professional examination of them can be made or until clearance to proceed is authorized by the District Engineer.

29. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws and ordinances and regulations of the States, Counties or Municipalities wherein the leased premises are located.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the
Secretary of the Army this day of 198 .

Witnesses

The above instrument, together with all the conditions thereof, is
hereby accepted this 8th day of December 1986 .

Witnesses

Anna J. Bonner
Rachel M. Brewer

CITY OF AUGUSTA, GEORGIA

By: *Charles A. Derby*

Title: *Mayor*

CERTIFICATION

I, PAUL H. DUNBAR III Attorney for the CITY OF AUGUSTA, GEORGIA hereby certify that the foregoing lease agreement accepted by Charles H. McKinney, of the CITY OF AUGUSTA is within the scope of his (her) authority to act upon behalf of the CITY OF AUGUSTA, and that in my capacity as Attorney for the Lessee find that the Lessee is legally and financially capable of entering into the contractual obligations contained in the foregoing agreement and that, upon execution, it will be legally enforceable.

Given under my hand, this 16 day of December, 1986.

Paul H. Dunbar III

ATTORNEY FOR THE CITY OF AUGUSTA, GEORGIA

RESOLUTION

A RESOLUTION AUTHORIZING CITY COUNCIL OF AUGUSTA TO ENTER INTO A LEASE WITH THE SECRETARY OF THE ARMY, UNITED STATES OF AMERICA WITH REGARD TO THE NEW SAVANNAH BLUFF LOCK AND DAM AREA

WHEREAS, the City Council of Augusta ("City") desires to lease from the Secretary of the Army, United States of America property known as the New Savannah Bluff Lock and Dam area under the terms and provisions set forth in a certain proposed Lease Agreement numbered DACW21-1-86-1139; a copy of which is attached hereto, marked Exhibit "A" and incorporated by reference herein;

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Clerk of Council are hereby authorized and directed to execute and deliver the original of the Lease Agreement attached hereto as Exhibit "A" for and on behalf of the City of Augusta.

DONE IN OPEN COUNCIL UNDER THE COMMON SEAL THEREOF,
THIS 9th DAY OF December, 1986.


MAYOR, CITY OF AUGUSTA

ATTEST:


CLERK OF COUNCIL

CERTIFICATE:

I, Charles O. Phillips, Clerk of Council, hereby certify that the above is a true and correct copy of the Resolution adopted by City Council of Augusta, Georgia, in meeting of December 8, 1986.


CLERK OF COUNCIL

MEMORANDUM OF AGREEMENT
between
DEPARTMENT OF THE ARMY
and
RICHMOND COUNTY, GEORGIA
for contributed funds related to the
DEWATERING AND REPAIR OF THE LOCK
AT THE NEW SAVANNAH BLUFF LOCK AND DAM

This is a MEMORANDUM OF AGREEMENT (hereinafter referred to as the "MOA"), entered into this 10th day of October, 1997, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the District Engineer, U.S. Army Corps of Engineers, Savannah District, and Richmond County, Georgia (hereinafter referred to as the "Contributor"), acting by and through the Mayor of the Augusta-Richmond County Commission.

WITNESSETH, THAT:

WHEREAS, the Rivers and Harbors Act of 3 July 1930 (H.D. 101, 70th Congress, 1st Session), authorized construction of the New Savannah Bluff Lock and Dam, and the Rivers and Harbors Act of 30 August 1935 (Senate Committee Print. 73rd Congress, 2nd Session) provided the location of the Project,

WHEREAS, the Government has closed the lock at the New Savannah Bluff Lock and Dam (hereinafter referred to as the "Project") because of structural problems;

WHEREAS, the Energy and Water Development Appropriations Act of 1997, P.L. 104-206 appropriated funds in the amount of \$1,000,000 for the dewatering and repair of the Project, as noted in House Report 104-679;

WHEREAS, the March 1997 Letter Report on Lock Repair at the New Savannah Bluff Lock and Dam, Savannah River, Georgia and South Carolina, estimated the amount of funds needed to dewater, and accomplish the necessary repairs to the Project to be \$1,500,000;

WHEREAS, the Contributor has expressed a desire to contribute funds towards the cost of the dewatering and repairs of the Project;

WHEREAS, the Contributor considers it to be in its own interest to expedite the dewatering and repair of the Project by voluntarily contributing funds (hereafter referred to as the "contributed funds") to be used by the Government for that purpose;

WHEREAS, the Government is authorized, pursuant to 33 U.S.C. 560, to accept and expend contributed funds, in connection with Federally appropriated funds, for any authorized work of public improvement of rivers and harbors whenever such work and expenditure may be considered by the Chief of Engineers as advantageous to the interests of navigation;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Government, using funds appropriated by the Congress of the United States and funds provided by the Contributor, shall perform dewatering and repair of the Project under the terms of this Agreement. In this Agreement, the term "dewatering and repair" shall include but is not necessarily limited to: continuing planning and engineering; advanced engineering and design; preconstruction engineering and design; engineering and design during construction; investigations to identify the existence and extent of hazardous substances; historic preservation activities; actual construction; supervision and administration; and all costs associated thereto, including contract expenditures, dispute settlements, and awards.
2. The Contributor shall contribute to the Government \$500,000, in cash towards the dewatering and repair of the Project. The Contributor shall verify to the satisfaction of the Government within 30 days after this MOA takes effect that the Contributor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Contributor.
3. The Government shall not obligate any funds contributed by the Contributor before they are received by the Government and available for obligation by the Government.
4. The Government shall use the contributed funds for no purpose other than the dewatering and repair of the Project. The Government shall spend the contributed

funds only after expending the \$1 million in federal funds appropriated by P.L. 104-206 for dewatering and repair of the Project.

5. The Government shall provide the Contributor with quarterly accountings of its expenditures of contributed funds for dewatering and repair of the Project. The first such accounting shall be provided within 30 days after the final day of the first complete Government fiscal year quarter following receipt of the contributed funds, and subsequent accountings shall be provided within 30 days after the final day of each succeeding quarter until the contributed funds are completely expended or the Government concludes dewatering and repair of the Project.

6. Subject to the availability of such funds and the approval of the Secretary of the Army, the Government shall return to the Contributor any funds contributed by the Contributor which are excess of the amount necessary for the Government to complete dewatering and repair of the Project (hereinafter referred to as "excess contributed funds").

7. The Government shall have no obligation to spend more than \$1 million in federal funds and \$500,000 in nonfederal funds on the dewatering and repair of the Project. The Government will limit its obligations to the total amounts of these funds.

8. The Government may, in its sole discretion, reprogram funds for costs of dewatering and repair of the Project which exceed the sum of the appropriated Federal funds and the contributed funds (hereinafter referred to as "further dewatering and repair"). However, the Government makes no commitment to accomplish such reprogramming.

a. If such reprogramming occurs, the Government shall inform the Contributor of the amount of the funds which have been reprogrammed to cover costs of further dewatering and repair (hereinafter referred to as "reprogrammed funds"). Within thirty days of such notice, the Contributor shall contribute to the Government an amount equal to one-half the amount of the reprogrammed funds and shall verify to the satisfaction of the Government that the Contributor has deposited the required amount (hereinafter referred to as "additional contributed funds") in an escrow or other account acceptable to the Government, with interest accruing to the

Contributor. The Government reserves the right to refrain from obligating the reprogrammed funds until the Contributor has met all its requirements under this paragraph.

b. The Government shall use the additional contributed funds and reprogrammed funds for further dewatering and repair of the Project. In addition, the Government shall spend the additional contributed funds and reprogrammed funds such that the additional contributed funds pay one-third of the cost of further dewatering and repair of the Project and the reprogrammed funds pay two-thirds of the cost of further dewatering and repair of the Project.

c. Subject to the availability of such funds and the approval of the Secretary of the Army, the Government shall return to the Contributor any additional contributed funds which are in excess of the amount necessary for the Government to complete repair and dewatering of the Project.

9. Nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the United States.

10. Nothing herein shall constitute, or be deemed to constitute, an assurance or promise of the Government to take any action other than those specifically set forth in this Agreement with respect to dewatering and repair of the Project. Nothing herein shall constitute, or be deemed to constitute, an assurance or promise of the Government to conduct other activities at the Project. Upon completion of dewatering and repair of the Project, the Contributor shall resume operation and maintenance of the Project and be responsible for all operation and maintenance costs for 10 years and thereafter for so long as the Project remains in operation. If the Contributor fails to operate or maintain the Project at any time, the Government reserves the right to permanently close the Project to navigation.

11. Before any party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

12. The Contributor shall hold and save the Government free from all damages arising from dewatering and repair of the Project, except for damages due to the fault or negligence of the Government or its contractors.

13. The Contributor shall not use federal funds as part of any contribution of funds under this Agreement unless the federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

IN WITNESS WHEREOF, the parties have executed the Memorandum of Agreement as of the day and year first written.

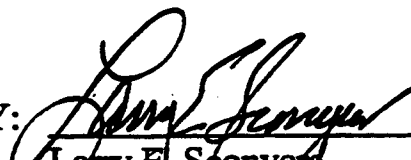
THE DEPARTMENT OF THE ARMY RICHMOND COUNTY, GEORGIA

BY:



Grant M. Smith
Colonel, U.S. Army
District Engineer

BY:



Larry E. Sconyers
Mayor
Augusta-Richmond County
Commission

This document approved as
to legal sufficiency and form
[Signature] 10/18/97
Attest: Date

Attest: _____

Appendix A-3

SUPPLEMENTAL AGREEMENT NO. 2
TO
LEASE NO. DACW21-1-95-1237
NEW SAVANNAH BLUFF LOCK AND DAM
J. STROM THURMOND PROJECT

THIS SUPPLEMENTAL AGREEMENT NO. 2, made and entered into by and between the SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, and RICHMOND COUNTY, GEORGIA, hereinafter referred to as the Lessee.

-WITNESSETH-

WHEREAS, on 1 May 1995, the Secretary granted unto Lessee a lease for public park and recreational purposes, for a term of five (5) years beginning 1 May 1995 and ending 30 April 2000; and

WHEREAS, on 11 March 1997, the lease was amended by Supplemental Agreement No. 1 to include an area for the purpose of installing a mobile home to house a resident caretaker; and

WHEREAS, parties desire to amend this lease to extend the term and add the navigation lock and three vacant buildings in the fenced caretaker's area to the leased premises; and

WHEREAS, parties hereto also desire to make certain administrative revisions to the exhibits included herein and add new lease conditions; and

NOW, THEREFORE, for and in consideration of the premises and other good and sufficient considerations, the parties hereto do mutually covenant and agree that effective as of midnight 8th day of December 1998, said lease is amended in the following respects and in these particulars only:

1. Delete the granting clause in its entirety as shown on the original lease and Supplemental Agreement No. 1 and substitute in lieu thereof new granting clause as follows:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth hereby leases to the Lessee, the property identified on Exhibit "A-1", being approximately 50 acres, attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

2. That said navigational lock is included in the leased premises pursuant to a Memorandum of Agreement entered into on 10 October 1997, by and between the Department of the Army, acting by and through the District Engineer, U.S. Army Corps of Engineers, Savannah District, and Lessee, acting by and through the Mayor of the Augusta-Richmond County Commission, attached hereto as new Exhibit "F" and made a part hereof.

3. In Condition No. 1 delete the words "for a term of five years, beginning 1 May 1995 and ending 30 April 2000" and substitute in lieu thereof the words "for a term of an additional ten (10) years from the date of execution of this instrument and ending on 7 December 2008."

4. Delete Condition No. 24a in its entirety and substitute in lieu thereof the following:

"24. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises. Specifically prohibited are the use of gambling devices, such as slot machines, video gambling machines, or other casino type devices that would detract from the family atmosphere. District Commanders may allow the sale of state lottery tickets, in accordance with state and local laws and regulations, as long as the sale of tickets constitutes a collateral activity, rather than primary activity, of the Lessee. The Lessee shall not install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon premises any activity which would constitute a nuisance."

4. In Condition No. 28 renumber the present paragraph as "a." and add the following new paragraph b.:

"28. PRELIMINARY ASSESSMENT SCREENING

b. CERCLA Notice. The information contained in this notice is required under the authority of regulations promulgated under Title 42, United States Code, Section 9620(h). The Secretary has made a complete search of its records concerning the property subject to this lease. Those records indicate that the following hazardous substances have been stored for one year or more (S), released (R), or disposed of (D) on the premises:

<u>INCIDENT</u>	<u>SUBSTANCE</u>	<u>QUANTITY</u>	<u>ASRN</u>	<u>SYNONYM</u>	<u>RCRA#</u>	<u>DATE</u>	<u>S/R</u>
SHOP BUILDING	VINYL PAINT PRIMER	3759 lbs.	N/A	PAINT	D001	4/19/93	S
SHOP BUILDING	VINYL PAINT	2600 lbs.	N/A	PAINT	D001	4/19/93	S
LOCK	HYDRAULIC FLUID	200 gal.	N/A	N/A	N/A	7/6/98	R
LOCK	HYDRAULIC FLUID	200 gal.	N/A	N/A	N/A	8/25/98	R

The lessee should consult the attached PAS, Exhibit D-2 for more details."

5. Add the following new Condition No. 35:

"35. REQUIREMENTS AND LOCK OPERATING PROCEDURES FOR ANADROMOUS FISH PASSAGE

a. The City of Augusta, Georgia agrees to operate the lock's gates and flood waters to allow for upstream and downstream migration of anadromous fish. Fish passage procedures will require approximately 30 to 50 lock cycles lasting approximately 50 minutes each during the period 15 March to 15 June annually. The majority of the lock cycles will be necessary within a two to three week period during the dates cited above. The maximum number of locks during a 24-hour period is estimated to be five. U.S. Fish and Wildlife Service (USFWS) biologists will determine when lock cycles for fish passage should begin and end. USFWS will provide at least three days notice to the City of Augusta prior to the date in which lock cycles are to begin. Lock cycles for fish passage will not be required on the weekends.

b. LOCK OPERATING PROCEDURES

(1) Lower water to downstream level in lock and open downstream river wall gate. Next fully open river wall flood valves. Maintain this status for 20 minutes.

(2) Close flood valves and close lower gate. Flood lock to upstream level. Open both upstream gates. Open both river and land wall drain valves halfway. Maintain this cycle for 20 minutes.

(3) This completes one cycle and takes about 50 minutes."

6. In Condition No. 5 delete the words "implementing Plan of Recreation Development and Management attached as Exhibit "B" and substitute in lieu thereof the words "implementing Plan of Recreation Development and Management attached as Exhibit "A-1".

7. Delete Exhibit A and Exhibit B and substitute in lieu thereof new Exhibit A-1, attached hereto and made a part hereof.

8. In Condition No. 8b delete the words "as Exhibit "C" and substitute in lieu thereof the words "as Exhibit "C" and Exhibit "C-1". Add new Exhibit C-1, attached hereto and made a part hereof.

9. In Condition No. 28 delete the words "as Exhibit "D" and Exhibit "E" and substitute in lieu thereof the words "as Exhibit "D", Exhibit "D-1", and Exhibit "D-2". Delete Exhibit E and substitute in lieu thereof new Exhibits D-1 and D-2, attached hereto and made a part hereof.

10. All other terms and conditions of this lease shall remain unchanged.

LEASE NO. DACW21-1-95-1237

IN WITNESS WHEREOF, I have hereunto set my hand by
authority of the Secretary of the Army this 8th day of
December, 1998.

Signed and sealed in the
presence of:

WITNESS

NOTARY PUBLIC

Notary Public, Richmond County, Georgia
My Commission Expires Jan. 4, 2000

Denise L. Titus
Denise L. Titus

Acting Chief, Real Estate Division
Contracting Officer

THIS SUPPLEMENTAL AGREEMENT NO. 2 is also executed by
the Lessee this 8th day of December, 1998.

AUGUSTA-RICHMOND COUNTY
RECREATION AND PARKS DEPARTMENT

Signed and sealed in the
presence of:

WITNESS

NOTARY PUBLIC

Notary Public, Richmond County, Georgia
My Commission Expires Jan. 4, 2000

By: Harry E. Sengue

LEASE NO. DACW21-1-95-1237

CERTIFICATE OF AUTHORITY

I, Lena J. Bonner (Name), certify that I am the Clerk of Commission (Title) of Augusta-Richmond County Commission do hereby certify that Larry E. Sconyers (Name) who signed the foregoing instrument on behalf of the Lessee was then Mayor (Title) of Augusta, Georgia. I further certify that the said officer was acting within the scope of powers delegated to this officer by the governing body of the Lessee in executing said instrument.

This 10th day of December, 1998.


AUTHORIZING OFFICIAL

Clerk of Commission
TITLE